

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.06.2018

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.17087 of 2013

C.Rathinaswamy

...Petitioner

Vs

1. The Superintendent of Police,
Tiruppur District.

2. The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore.

3. The Additional Director General
of Police (L & O),
Chennai-4

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the respondents in connection with the impugned order passed by the first respondent in Na.Ka.No.F1/PR42/2010, dated 29.07.2011 and by the 2nd respondent in RC No.D2/AP-26/2011 dated 14.12.2011 and quash the same and further direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkatramani, Sr.Counsel
for Mr.M.Muthappan

For Respondents : Mr.J.Pothiraj, Spl.G.P.

ORDER

The petitioner was directly recruited as a Grade-II Police Constable through a Selection conducted by the Tamil Nadu Uniformed Services Recruitment Board and was appointed in the Police Force on 25.10.1993. He was upgraded as Grade-I Police Constable in 2003 and further as Head Constable in 2008. According to the petitioner, he had received 31 awards and had not come to any adverse notice through out his carrier.

2.While the petitioner was working in Tiruppur South Police Station in 2010, he is alleged to have developed an affair with one Kamala Vinodhini of Coimbatore, who was working as a Computer Instructor, at Tiruppur and alleged to have cheated the woman under the pretext of promising to marry her. The conduct of the petitioner, as alleged, led to 'the attempt to commit suicide' by the said woman on one occasion, for which, a Criminal case was registered in Crime No.210 of 2010, on the file of the Tiruppur South Police Station for offences under the Indian Penal Code. It appears, subsequently, the said Kamala Vinodhini, on an another occasion, committed suicide, which again resulted in another Criminal case registered in Crime No.417 of 2011 under Section 306 read with Section 417 of the Indian Penal Code.

3.In view of the registration of criminal cases against the petitioner, a departmental Charge-memo was issued under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Disciplinary and Appeal) Rules and the charge, as framed against the petitioner, reads as follows:

"highly reprehensible and indisciplinary conduct in having developed love affair with one Kamala Vinodhini, d/o Ramachandran of Coimbatore who was conducting computer training at schools in Tiruppur under the pretext of marrying and cheated her which resulted her to attempt to commit suicide and thereby a criminal case was registered in Tiruppur South Police Station in Crime No.210 of 2010 under Section 309 IPC and 417 IPC dt.11.1.2010 and subsequently she committed suicide by consuming cow dung powder which resulted in registration of a case in Coimbatore B4 Police Station in crime No.417/2010 under Section 174 Cr.P.C.on 14.3.2010".

4.An enquiry was initiated into the charge and six Prosecution Witnesses were examined and 13 documents were marked. On conclusion of the enquiry, a report was submitted holding the charge proved against the petitioner, on 17.6.2011. After considering the representation against the enquiry report by the petitioner on 01.07.2011, the Disciplinary Authority, viz., the first respondent herein, has accepted the findings of the enquiry and imposed major penalty of 'compulsory retirement from service', on the petitioner, by order dated 29.07.2011.

5.As against the order of the Disciplinary Authority, the petitioner preferred an Appeal to the second respondent,

viz., the Appellate Authority, on 24.08.2011 and the second respondent, by an order dated 14.12.2011, rejected the Appeal by a non-speaking order. A Review Petition was preferred to the third respondent on 18.5.2012, but no order has been passed in the Review Petition and therefore, the petitioner is before this Court, challenging the order of punishment of the first respondent dated 29.07.2011 and the confirmation of the same on Appeal, by the second respondent on 14.12.2011.

6. In the meanwhile, the two criminal cases registered against the petitioner, viz., S.C.No.345 of 2011, which criminal case was for abetting the suicide of the said Kamala Vinodhini, ended in acquittal, vide judgment of the trial Court, dated 21.3.2012 and the other criminal case in C.C.No.524 of 2012, in respect of 'the attempt to commit suicide' by the same woman earlier to her suicide, had ended in discharge, by this Court in CrI.R.C.No.736 of 2013, dated 20.09.2013. The orders passed in the criminal cases have become final and no further Appeal or Revision have been filed.

7. The learned Senior Counsel Mr.R.Venkatramani, appearing for the petitioner, would submit that in view of the acquittal by the Criminal Court, the findings of the enquiry cannot stand the test of the judicial scrutiny. According to the learned Senior Counsel, the Enquiry Officer merely concluded that the charge against the petitioner was proved on the basis of presumption without any direct evidence to establish the fact that there was abetment at the instance of the petitioner, which had driven the said Kamala Vinodhini to commit suicide. According to the learned Senior Counsel, the findings in the Criminal Case was very clear on that aspect and the learned Judge has concluded that there was no direct evidence to prove the guilt of the petitioner.

8. The only evidence which was made available in the trial was the evidence given by the sister of the deceased, who would also state that her sister, before dying, had informed her that she had been cheated. Other than that there was absolutely no piece of evidence to establish the guilt of the petitioner. In such view of the matter, the learned Senior Counsel would submit that the findings of the departmental enquiry, which placed heavy reliance on the third party evidence, cannot be said to be on the basis of any worthwhile piece of evidence and therefore, the findings arrived at in the departmental enquiry, is defective and unreliable.

9. The learned Senior counsel would further submit that the first respondent's penalty order dated 29.07.2011 did not threadbare analyse the strength of evidence against the petitioner or in his favour. But, by a non-speaking order, the first respondent has imposed the penalty of 'compulsory

retirement from service' on the petitioner.

10. According to the learned Senior Counsel, less said the better in respect of the Appellate order passed by the second respondent dated 14.12.2011, which was completely bereft of any consideration at all and the same was contrary to service regulations, as the Appellate Authority was expected to consider each and every aspect of objection in detail before passing orders in Appeal one way or the other.

11. Even otherwise, the learned Senior Counsel would submit that in view of the acquittal and discharge of the petitioner in both the Criminal cases, the findings and the subsequent imposition of penalty, on the confirmation of Appeal, cannot be countenanced in Law, particularly, the trial Court has given a clean chit to the petitioner, as the prosecution failed to establish that the petitioner was responsible for 'abetting the suicide' of the woman. Therefore, the learned Senior counsel would submit that the impugned orders are liable to be set aside.

12. Upon notice, Mr. J. Pothiraj, the learned Special Government Pleader entered appearance for the respondents and filed counter affidavit.

13. The learned Special Government Pleader vehemently opposed the grant of relief to the petitioner stating that there was enough material available in the departmental enquiry of holding the charge proved against the petitioner. According to the learned Special Government Pleader, the standard of proof was different from criminal trial and the departmental proceedings and there was preponderance of probabilities against the petitioner and therefore, the Enquiry Officer, had rightly come to the conclusion that the charge was established. The Disciplinary Authority as well as the Appellate Authority have taken into consideration the gravity of the charge framed against the petitioner and therefore, imposed the penalty of 'compulsory retirement from service' on him. According to the learned Special Government Pleader, all the witnesses gave cogent reasons during the preliminary enquiry and the same was not retracted during the regular enquiry. The petitioner was given adequate opportunity to cross-examine all the witnesses and he was not able to elicit any answer in his favour from the deposition of the Prosecution Witnesses. Therefore, the impugned punishment imposed on the petitioner, on the basis of proved mis-conduct, cannot be found fault with.

14. This Court has considered the rival submissions of the learned Senior Counsel as well as the learned Special Government Pleader and perused the materials and pleadings placed on record.

15.As regard the charge memo against the petitioner is concerned, there cannot be two opinions that the same could be substantively proved only on the basis of oral evidence by the persons, who are privy to the affair between the petitioner and the deceased woman. In this case, except the evidence of the sister of the deceased woman, there was no direct evidence available in order to establish the guilt of the petitioner. Even the sister of the deceased had merely stated that she had heard of her sister telling her about she being cheated by the petitioner, in one conversation. Other than that there was no evidence, which can directly implicate the petitioner in respect of the charge against him. Unless there was a clinching evidence to show that the petitioner was responsible 'for abetting the suicide' of the deceased woman, it is very difficult to come to a conclusion that the suicide of the woman was directly attributable to the conduct of the petitioner.

16.From the findings of the Enquiry Officer, it appears that the Enquiry Officer was more guided by certain presumptions unsupported by any concrete piece of evidence. Such finding cannot be the basis for imposition of major penalty like 'compulsory retirement from service' on the petitioner. Even otherwise, the Disciplinary Authority, ought to have analysed the material evidence, which was the basis of the findings, in his impugned order dated 29.07.2011. However, the Disciplinary Authority failed to consider the correctness of the findings of the Enquiry Officer, on the basis of the objections put forth by the petitioner. As rightly contended by the learned Senior Counsel for the petitioner, the order of Disciplinary Authority, dated 14.12.2011 is per se unsustainable and the same is contrary to the Rule position. The order of the Appellate Authority, to say the least, suffers from non-application of mind and the same is completely non-speaking and passed without any regard for the mandate of the relevant Rule.

17.Inasmuch as the orders passed by both the first and second respondents cannot be sustained in law, particularly, in the teeth of the fact that the major punishment of 'compulsory retirement from service' is imposed on the petitioner, nevertheless, this Court is of the considered view that the conduct of the petitioner cannot be completely condoned, notwithstanding discharge and acquittal by the Criminal Court. There appears to be some circumstantial evidence available to establish the fact that the petitioner had an extra marital affair and there is a probability that because of his conduct, the woman, who was part of the affair, committed suicide, and the affair ended in tragedy. In the said circumstances, though this Court ultimately finds that there was no clinching material available in respect of abetment on the part of the petitioner, but at the same time, this Court finds that the conduct of the

petitioner, being a member of the Disciplinary Force, was not desirable one. In such view of the matter, this Court is of the considered view that the petitioner is liable to be punished for his conduct having attracted an affair, which affair was the cause of death of the woman.

18. For the above said reasons, the impugned order of the first respondent dated 29.07.2011 and the order of the second respondent dated 14.12.2011 are hereby set aside. Consequently, the petitioner is directed to be reinstated in service. However, the matter is remitted back to the first respondent, who shall pass orders imposing any other lesser punishment than 'compulsory retirement from service' on the petitioner. In the event of any lesser penalty being imposed on the petitioner, the same shall take effect from the date of 'compulsory retirement from service'. The first respondent is directed to pass orders complying with this direction, within a period of eight weeks from the date of receipt of copy of this order.

In fine, the writ petition stands allowed as above. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Superintendent of Police,
Tiruppur District.
2. The Deputy Inspector General of Police,
Coimbatore Range, Coimbatore.
3. The Additional Director General
of Police (L & O), Chennai-4.

+1cc to Mr.M.Muthappan, Advocate, S.R.No. 41134.
+1cc to the Government Pleader, High Court, Madras,
S.R.No.41445,41401.

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BM 11/07/2018